

**REMARKS**

It is respectfully requested that this application be reconsidered in view of the above amendments and the following remarks and that all of the claims remaining in this application be allowed.

**Claim Amendments**

Claims 1-24 and 30 were previously canceled and Claim 26 is canceled by this amendment.

Claim 25 has been amended to recite that the amount of contrast agent ranges from about 45 to no more than 60 weight percent. Support for this amendment is found in Applicants' specification at, for example, originally presented Claim 5 and in the specification at paragraph [0018].

Claim 25 has been further amended to recite that the ratio of ratio of ethylene vinyl alcohol copolymer to the tantalum contrast agent is from 0.077 to about 0.90. The upper limit is found in the specification at, for example, paragraph [0056]. Accordingly, if 40 weight percent of ethylene vinyl alcohol is employed and 45 weight percent of tantalum contrast agent is employed, then the weight ratio is about 0.90.

No new matter has been introduced by the above amendments and, accordingly, entry of these amendments is requested.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

**Rejection Under 35 U.S.C. §112, second paragraph**

Claims 25 and 27-29 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants submit that this rejection has obviated by the amendment to Claim 25. Withdrawal of this rejection is requested.

**Rejection Under 35 U.S.C. §103(a)**

Claims 25-29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Whalen et al. (US 2002/0090339) in view of Paterson et al. (US 2004/0224864) or Porter et al. (US 2004/0197302) are maintained for reasons of record in the previous office action filed on July 20, 2009 and December 24, 2009.

Applicants maintain that none of the cited references teach or suggest a contrast agent concentration of from about 45 to no more than 60 weight percent. At best, the prior art teach a maximum of about 40 weight percent tantalum. Further the art teaches that preferred embodiments use less than 40 weight percent tantalum. Such would teach away from the currently claimed range found in now presented Claim 25.

In view of the above, withdrawal of this rejection is requested.

**Obviousness-Type Double Patenting Rejection**

Claims 25-29 are rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,667,767 and claims 1-8 and 16-23 of U.S. Patent No. 5,695,480 are maintained for reasons of record in the previous office action filed July 20, 2009 and December 24, 2009.

Applicants again maintain that none of the cited references teach or suggest a contrast agent concentration of from about 45 to no more than 60 weight percent. At best, the prior art

teach a maximum of about 40 weight percent tantalum. Further the art teaches that preferred embodiments use less than 40 weight percent tantalum. Such would teach away from the currently claimed range found in now presented Claim 25.

In view of the above, withdrawal of this rejection is requested.

**Conclusion**

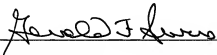
Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-4972. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-4972. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 50-4972.

Respectfully submitted,

Date August 6, 2010

By 

SWISS TANNER, P.C.  
Customer Number: 88984  
Telephone: (650) 305-2699  
Facsimile: (650) 949-2065

Gerald F. Swiss  
Attorney for Applicants  
Registration No. 30,113